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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,346

09/29/2003

Dario De Judicibus

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7141

30449 7590 09/02/2009  
SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

EXAMINER

THEIN, MARIA TERESA T

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/676,346	<b>Applicant(s)</b> JUDICIBUS ET AL.	
	<b>Examiner</b> MARISSA THEIN	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 5, 2009 has been entered.

### ***Response to Amendment***

Applicants' "Request for Continued Examination" filed on June 5, 2009.

Claims 1-12 are cancelled. New claims 13-22 are added. Claims 13-22 remain pending in this application and an action on the merits follow.

### ***Claim Objections***

Claims 13 and 22 are objected to because of the following informalities:

"SMS" should be --Short Messaging Service--.

. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrases “a first user telephone number” and “a second user telephone number” are unclear. Are these telephone numbers the same or are they different? Are the telephone numbers from the same user?

The phrases “the second user identification” and “the first user identification” are unclear. Are these user identifications the same or are they different?

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2007/0027803 to Brandes et al. in view of U.S. Patent Application Publication No. 2002/0120585 to Talker.**

Regarding claims 13 and 18, Brandes discloses a method and a computer program product for booking and paying a retailer comprising a Point of Sale connected to a transaction server, said method comprising: said transaction server (first server, paragraph 24) receiving a SMS message (Short Message Center, paragraph 93) from a wireless device of a user (first message received from a payer identified, paragraph 46), said SMS message comprising a retailer identification identifying the retailer (admissible identification code of an associated payee, paragraph 28), said transaction server comprising a retail identifier that identifies the retailer, a first user telephone number of

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the wireless device of the user, and confidential user information for implementing a transaction between the retailer and the user, said confidential user information comprising a first user identification identifying the user (paragraph 96; paragraph 140); said transaction server receiving, from a carrier transporting the SMS message to the retailer, a second user telephone number of the wireless device of the user (paragraph (paragraph 150; paragraph 93); said transaction server verifying that the second user telephone number matches the first user telephone number and that the retailer identification matches the retailer identifier (paragraph 46; paragraph 141); after said verifying, said transaction server sending the confidential user information to the POS (Figure 1 ref, no. 15, paragraphs 136-137) comprised by the retailer (paragraph 73; paragraph 56); and after said sending the confidential user information, said transaction server receiving from the retailer payment information comprising a fee required to be paid by the user to the retailer with respect to the transaction (paragraph 136), said receiving the payment information occurring after the user had entered a second user identification identifying the user (paragraphs 161-162).

However, Brandes does not explicitly disclose the user had entered on the POS a second user identification identifying the user and the retailer had confirmed that the second user identification matched the first user identification. Brandes disclose the first telecommunication means selectively communicate the first server with a digital mobile telephone unit identified by an admissible telephone number of an associated payer and with a telecommunication terminal identified by an admissible identification code of an associated payee and the telecommunication means comprising a plurality

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of telecommunication equipments (paragraph 25). Brandes discloses the first server comprising first verifying means for verifying in the data storage means whether a first message received through the telecommunication means contains an admissible telephone number of an associated payer and an admissible identification code of an associated payee, said first verifying means generating a first acceptance message when they detect an admissible identification code and an admissible telephone number; second verifying means for verifying in the data storage means whether a transaction authorization request received through the telecommunication means in addition to the admissible telephone number detected by the first verifying means, satisfies said pre-established authorization criterion, said second verifying means generating a second acceptance message when the authorization request satisfies said authorization criterion; third verifying means for verifying in the first data storage means whether a safety parameter received through the telecommunication means satisfies the safety criterion associated to the admissible telephone number detected by the first verifying means, said third verifying means generating a third acceptance message when they detect that the safety parameter satisfies the safety criterion associated to the admissible telephone number (paragraphs 28-30).

Talker, on the other hand, teaches the user had entered on the POS a second user identification identifying the user (paragraph 37; paragraph 79) and the retailer had confirmed that the second user identification matched the first user identification (abstract, paragraphs 16-17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method and computer program product of Brandes, to include the retailer had confirmed that the second user identification matched the first user identification, as taught by Talker, in order to verify the user's identity (Talker, paragraph 13).

Regarding claims 14-17 and 19-22, Brandes discloses prior to said receiving the SMS message, said transaction server storing the first user telephone number and the confidential user information (paragraph 26; paragraph 140); storing including storing the retailer identification (paragraph 26; paragraph 46); after said receiving from the retailer payment information, transaction server communicating with a banking server (account management means) to perform a financial settlement of the transaction based on the payment information (paragraphs 161-62); and said transaction server encrypting the confidential user information, and wherein said sending the confidential user comprises said transaction sending the encrypted confidential user information to the POS comprised by the retailer (paragraph 58; paragraph 73).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARISSA THEIN whose telephone number is (571)272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./  
Examiner, Art Unit 3627  
August 31, 2009

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627